

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SENSIBLE TRAFFIC ALTERNATIVES	)	CIVIL NO. 03-00628 SOM-LEK
AND RESOURCES, LTD., dba The	)	
Alliance For Traffic Improvement,	)	
a Hawaii non-profit corporation,	)	DECLARATION OF
	)	A. JOSEPH OSSI
Plaintiff,	)	
	)	
v.	)	
	)	
FEDERAL TRANSIT	)	
ADMINISTRATION OF THE U.S.	)	
DEPARTMENT OF	)	
TRANSPORTATION;	)	
ADMINISTRATOR OF THE FEDERAL	)	
TRANSIT ADMINISTRATION OF	)	
THE U.S. DEPARTMENT OF	)	
TRANSPORTATION; DEPARTMENT	)	
OF TRANSPORTATION SERVICES	)	
OF THE CITY & COUNTY OF	)	
HONOLULU; DIRECTOR OF THE	)	
DEPARTMENT OF	)	
TRANSPORTATION SERVICES OF	)	
THE CITY & COUNTY OF	)	
HONOLULU; JOHN DOES 1-10;	)	
JANE DOES 1-10; DOE	)	
PARTNERSHIPS 1-10; DOE ENTITIES	)	
1-10; AND DOE GOVERNMENT	)	
ENTITIES 1-10,	)	
	)	
Defendants.	)	

DECLARATION OF A. JOSEPH OSSI

I, A. Joseph Ossi, declare:

1. I am a Senior Environmental Protection Specialist in the Office of Planning and Environment in the Federal Transit Administration (FTA), an agency of the United States Department of Transportation (USDOT). I have

personal and/or official knowledge of the matters set forth below and make this declaration in response to questions posed by the Court at the hearing on plaintiff's motion for a temporary restraining order.

2. The decision to phase a project is tied to several considerations, the primary one being the availability of funding for the project. FTA does not have a standard approach to the phasing of projects. The approach taken will depend on limitations on the Federal or non-Federal funding for the project, the planning history of the project, and the degree of local consensus in favor of the project. In at least four cases described below, the Record of Decision (ROD) was issued on only the Initial Operating Segment (IOS) as in Honolulu. In each of these cases, as in Honolulu, a larger project encompassing the IOS and subsequent phases were fully evaluated in the draft or final Environmental Impact Statement (EIS), or in both the draft and final EISs. However, there is no situation that matches the facts in Honolulu exactly.
3. In the case of the Newark-Elizabeth Rail Link (NERL), a project now under construction in northern New Jersey, the draft EIS covered all phases of a multiphase project, but the final EIS and the ROD

covered only the IOS, a segment with independent transit utility and logical termini connecting two existing stations on separate lines. The NERL IOS is the subject of a funding agreement between FTA and the project sponsor for its construction. FTA currently has underway the preparation of a supplemental EIS on another segment of the NERL project between Newark International Airport and downtown Elizabeth.

4. In the case of the Seattle Link light rail transit (LRT) project, the final EIS and ROD initially covered all phases of a multiphase project that extended from Northgate north of downtown Seattle, through the University of Washington campus, through downtown Seattle, through the Rainier Valley, and through the suburb of Tukwila to Sea-Tac International Airport. However, the project sponsor decided to reconsider the alignment of the northern segment of the project because of the high cost of the tunneling plan in the ROD, and FTA agreed to prepare a supplemental EIS on that segment. Changes to that and other segments of the project resulted in FTA's issuance of an amended ROD, and that ROD covered only the initial segment, a fully functional transit project extending south from downtown Seattle through the Rainier Valley to Tukwila.

This initial segment is now under a funding agreement between FTA and the project sponsor for its construction. A supplemental draft EIS has been issued for the northern segment that is now a separate phase on its own separate schedule. An additional phase of the project presented in the final EIS, the extension into the Sea-Tac Airport from Tukwila, is also deferred and awaits further evaluation and additional funding.

5. In the case of the Portland (Oregon) North-South LRT project, a draft EIS was issued for an LRT line running north-south through downtown Portland and intersecting an existing east-west line in downtown Portland. When a general bond referendum to provide local funding for the project was defeated, FTA issued a supplemental draft EIS, final EIS, and ROD covering only the northern segment for which local funding was available. The northern segment is now under a funding agreement for its construction, and a supplemental EIS on alternative alignments and funding for the southern segment is underway.
6. In the case of the Third Street LRT in San Francisco, the draft and final EIS covered both planned phases of the project consisting of a surface LRT alignment

along Third Street (Phase 1), transitioning to subway south of Market Street and continuing into Chinatown in subway (Phase 2). Funding was available only for Phase 1. Funding for Phase 2 was very speculative at the time, because Phase 2 was not yet included in the regional transportation plan and its implementation was therefore far in the future. FTA issued a ROD only for Phase 1, although the ROD also permitted several key parcels of land needed for Phase 2 to be acquired.

7. Numerous examples exist where FTA has issued the final EIS and ROD on a project that was then phased for construction and funding purposes. In these cases, financial shortfalls are the primary reason for phasing the project. In each case, the original funding agreement for construction covered an IOS that is a segment of the full project covered in the final EIS and ROD. In some cases, subsequent funding agreements were issued for subsequent phases of the project. Examples of this type include: the Atlanta North Line of MARTA; the Hudson-Bergen LRT in northern New Jersey; the Jacksonville (Florida) Automated Skyway Express (a downtown people mover); the Los

Angeles Metro Rail Red Line; the St. Louis-St. Clair LRT; and the Salt Lake City University-to-Airport LRT.

8. In other cases where FTA issued a final EIS and ROD on a project that was then phased for construction and funding purposes, the subsequent phases beyond the IOS have not yet been addressed in a funding agreement.

Examples include: the Boston Piers Transitway; the Dallas South Oak Cliff LRT; the Sacramento South Corridor LRT; and the San Jose Tasman LRT.

9. Sometimes the financial constraints are known from the start, and a proposed transit line that might have been evaluated as a single project is broken into operable phases before the EIS process even begins. For example, in San Francisco, the extensions of the Bay Area Rapid Transit system (BART) south to Colma and then further south to San Francisco International Airport were treated as separate projects in separate draft and final EISs, separate RODs, and separate funding agreements.

10. The procedures that FTA will follow before issuing another ROD in Honolulu to address the remainder of the proposed project depend upon a number of factors not yet known. For example, although all phases of the Honolulu BRT project are fully evaluated

in the final EIS, Congress must authorize and appropriate funds for the subsequent phase or phases of the project. The type of environmental review FTA will undertake depends, in part, on whether and when additional Federal funds become available. Applicable regulations provide that a written re-evaluation of the currency of the final EIS is required before further approvals may be granted if three years have elapsed since the approval of the final EIS. 23

C.F.R. 771.129(b). A supplemental EIS will be prepared where changes to the proposed project or new information or circumstances would result in significant impacts not evaluated in the final EIS. 23 C.F.R. 771.130(a). In any event, prior to FTA approving subsequent phases, those phases must be addressed in a ROD.

11. The current ROD does not limit the consideration of reasonable alternatives for subsequent phases. In the supplemental declaration of Ray Sukys, he noted that the IOS project can exist on its own, even if no other portions of the Honolulu regional Bus Rapid Transit (BRT) are ever built. Also, he stated at paragraph 4, "The implementation of the Honolulu BRT project should not foreclose the opportunity to

consider alternatives along the Primary Corridor Transportation Project, as that project is described in the Final Environmental Impact Statement dated June 2003. In fact, the IOS Record of Decision stipulates that a Supplemental Environment Impact Statement (SEIS) must be prepared for the remainder of the Primary Corridor BRT project. If light rail transit is planned for the Primary Corridor, a new Alternatives Analysis with a new Draft Environmental Impact Statement would be required." In other words, since the IOS is capable of standing alone, other transit options can still be considered for the remainder of the Primary Corridor. Since the IOS is a BRT project with no track construction, the IOS could be converted to other transit options at a later date. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of December 2003, in Washington, District of Columbia.

---

A. Joseph Ossi